

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Community Affairs Committee

BILL: PCS/SB 282 (690008)

INTRODUCER: Community Affairs Committee

SUBJECT: Review of the Department of Community Affairs and the Florida Housing Finance Corporation under the Florida Government Accountability Act

DATE: March 5, 2010

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wolfgang	Yeatman	CA	Pre-meeting
2.			GO	
3.			TA	
4.			RC	
5.				
6.				

I. Summary:

This proposed committee substitute (PCS) reenacts the Department of Community Affairs, including Division of Community Planning, the Division of Housing and Community Development, and the Division of Emergency Management, and the Florida Housing Finance Corporation.

This bill substantially reenacts sections 20.18 and 420.504 Florida Statutes.

II. Present Situation:

Department of Community Affairs

The Department of Community Affairs (Department or DCA) states that the agency mission is to “meet the needs of Floridians’ by investing in communities and working with them to plan and manage growth.”

Section 20.18, F.S., creates the Department of Community Affairs¹ and provides that the head of the Department is the Secretary of Community Affairs who is appointed by the Governor and confirmed by the Senate. The Department is designated by law as the state’s land planning

¹ See SENATE COMMITTEE ON COMMUNITY AFFAIRS, AGENCY SUNSET REVIEW OF THE DEPARTMENT OF COMMUNITY AFFAIRS, 2010-209 ISSUE BRIEF, organizational chart of the Department of Community Affairs, marked as Appendix A available at http://www.flsenate.gov/data/Publications/2010/Senate/reports/interim_reports/pdf/2010-309ca.pdf.

agency,² and is divided into the Division of Community Planning, the Division of Housing and Community Development, and the Division of Emergency Management.³

Section 20.18(2), F.S., provides that the Division of Emergency Management is a separate budget entity and is not subject to control, supervision or direction by the Department of Community Affairs in any manner.⁴ The division director is appointed by the Governor, serves at the pleasure of the Governor, and is the agency head of the division for all purposes.

Professional, technological, and administrative services are provided by the Department under a service agreement executed by the Department and the division. For FY 2009-10, the division has 136 full-time equivalent employees (FTEs), a trust fund budget of \$367 million (mostly federal funds), and no general revenue appropriation.

Similarly, s. 420.504, F.S., creates the Florida Housing Finance Corporation as a public corporation and a public body within the Department of Community Affairs. The corporation is designated as a separate budget entity and is not subject to control, supervision or direction by the Department in any manner, including personnel, purchasing, real estate transactions, and budgetary matters. Corporation employees are not state employees. For FY 2009-10, the corporation has 127 full-time employees, 6 part-time employees, a trust fund budget of \$30 million (state documentary stamp tax revenues), and no general revenue appropriation.

Division of Community Planning – Responsibilities and Programs

The Division of Community Planning works with local governments to implement and administer Florida's growth management laws and associated programs and services, and also provides local governments with technical support to meet local growth challenges and to help plan their future. The division works closely with local governments, other state and regional agencies, stakeholders, and the general public to ensure sound comprehensive planning and management of growth across the state. The division's primary responsibilities include implementation of the programs required by the Legislature under the Local Government Comprehensive Planning and Land Development Regulation Act⁵ and the Environmental Land and Water Management Act.⁶

The Local Government Comprehensive Planning and Land Development Regulation Act requires that all of Florida's 67 counties and 410 municipalities, as well as one special district, adopt and implement a comprehensive plan that guides future growth and development. All land development regulations and development permits must be consistent with the adopted comprehensive plan, and each adopted plan must meet certain procedural and substantive standards.⁷ The act is broad in scope and provides policy direction on land use and development,

² Section 163.3164 (20), F.S.

³ Section 20.18, F.S.

⁴ However, DCA does provide DEM's administrative services and is involved in contracts, audits, legal compliance, and finance and accounting transactions, including all payments, associated with hundreds of millions of dollars of DEM grants to local communities.

⁵ Chapter 163, Part II, F.S.

⁶ Sections 380.012, 380.021, 380.031, 380.04, 380.05, 380.06, 380.07, and 380.08, F.S.; for a more thorough discussion of the division's programs, see SENATE COMMITTEE ON COMMUNITY AFFAIRS, AGENCY SUNSET REVIEW OF THE DEPARTMENT OF COMMUNITY AFFAIRS, 2010-209 ISSUE BRIEF, *available at* http://www.flsenate.gov/data/Publications/2010/Senate/reports/interim_reports/pdf/2010-309ca.pdf.

⁷ Section 163.3202, F.S.

coastal zone management, conservation, housing, water supply, transportation, public schools, other public facilities and capital improvements, and intergovernmental coordination. Comprehensive plans and plan amendments have a significant impact on the quality of life for Floridians. Plans provide direction for a full range of development, from very large scale development, to new airports and electrical generation facilities, to coastal development, and to rural economic opportunities. The Division of Community Planning carries out the Department's statutory growth management assignments and is responsible for the overall conduct of the program, the administration of implementing rules, and the exercise of state oversight of local comprehensive plans and plan amendments.

Division of Housing and Community Development – Responsibilities and Programs

The Division of Housing and Community Development administers state and federal programs designed to provide community and economic development assistance. The division is primarily federally funded and provides grants to eligible local governments for infrastructure, revitalization, housing rehabilitation, economic development, and park lands. It assists public and nonprofit community organizations in identifying the needs of their low-income residents and in developing and coordinating initiatives to support citizens in meeting critical needs such as food, housing, health care, and utilities. The division also staffs the Florida Building Commission which implements and regulates the Florida Building Code for all structures in Florida.

Division of Emergency Management – Responsibilities and Programs

The Division of Emergency Management (DEM) operates as a separate budget entity whose Director reports directly to the Governor. The division is statutorily required to enter into a service agreement with the Department of Community Affairs (DCA) for professional, technological, and administrative support services.⁸

DEM is responsible for maintaining a statewide program of emergency management. This includes coordination with the federal government, other state agencies, county and municipal governments, school boards, and private agencies.⁹ The division directs and controls the state's emergency response and recovery operations through the operation of a State Emergency Operations Center (SEOC). The division also works closely with the Department of Law Enforcement (FDLE) to protect against acts of terrorism, and for the initial response to and recovery from such acts.¹⁰ DEM is the State Administrative Agency (SAA) responsible for administering federal disaster response, recovery, and mitigation program grant funding; federal homeland security programs grant funding; and state funds appropriated for emergency management and domestic security purposes.

Florida Housing Finance Corporation

The Florida Housing Finance Corporation (successor to the Florida Housing Finance Agency) is the state entity primarily responsible for financing the construction and reconstruction of new and rehabilitated affordable housing in Florida and encouraging the investment of private capital in affordable housing. The corporation was created by the Legislature in 1997 to streamline

⁸ Section 20.18, F.S.

⁹ Section 252.35, F.S.

¹⁰ Section 943.03101, F.S.

implementation of affordable housing programs and is a public corporation housed within the DCA. Section 420.504, F.S., provides that the corporation is a separate budget entity not subject to control, supervision, or direction by the DCA, and is governed by a nine-member board of directors comprised of the Secretary of Community Affairs (serving as an ex officio voting member) and eight members appointed by the Governor.

Sunset Review

Under the Florida Government Accountability Act,¹¹ most state agencies are subject to a two-year “sunset” review process to determine whether the agency should be retained, modified, or abolished. The Legislature is currently reviewing the Department of Community Affairs. The review of the Department of Community Affairs includes the Division of Emergency Management and the Florida Housing Finance Corporation, both of which are attached to but independent of the Department. The Senate Community Affairs Committee is the primary sunset review committee for the Department of Community Affairs and the Florida Housing Finance Corporation. The Senate Military Affairs and Domestic Security Committee is the primary sunset review committee for the Division of Emergency Management. The Senate Transportation and Economic Development Appropriations Committee will assist both committees in this review.

Reviews are accomplished in three steps. In year one of the review, an agency under review must produce a report providing specific information, as enumerated in s. 11.906, F.S., related to:

- Agency performance measures;
- The agency complaint process;
- Public participation in making agency rules and decisions;
- Compliance with state purchasing goals and programs for specified businesses;
- Compliance with statutory objectives for each program and activity;
- Program overlap or duplication with other agencies;
- Less restrictive or alternative methods of service delivery;
- Agency actions to correct deficiencies and implement recommendations of legislative and federal audit entities;
- The process by which an agency actively measures quality and efficiency of services it provides to the public;
- Compliance with public records and public meetings requirements;
- Alternative program delivery options, such as privatization, outsourcing, or insourcing;
- Agency recommendations to improve program operations, reduce costs, or reduce duplication;
- The effect of federal intervention or loss of federal funds if the agency, program, or activity is abolished;
- Agency advisory committees;
- Agency programs or functions that are performed without specific statutory authority; and
- Other information requested by the Legislature.

¹¹ Sections 11.901-11.920, F.S.

Upon receipt of the agency information, the Joint Legislative Sunset Committee and the House and Senate committees assigned to act as sunset review committees¹² must review the information submitted and may request studies by the Office of Program Policy Analysis and Government Accountability (OPPAGA).

In year two of the review and based on the agency submissions, the OPPAGA studies, and public input, the Joint Legislative Sunset Committee and the legislative sunset review committees will:

- Make recommendations on the abolition, continuation, or reorganization of each state agency and its advisory committees, and on the need for the performance of the functions of the agency and its advisory committees; and
- Make recommendations on the consolidation, transfer, or reorganization of programs within state agencies not under review when the programs duplicate functions performed in agencies under review.

In addition, the House and Senate sunset review committees must propose legislation necessary to carry out the committees' recommendations.

An agency subject to review is scheduled to be abolished on June 30 following the date of review as specified in s. 11.905, F.S., provided the Legislature finds that all state laws the agency has responsibility to implement or enforce are repealed, revised, or reassigned to another remaining agency and that adequate provision has been made to transfer certain duties and obligations to a successor agency. If an agency is not abolished, continued, or reorganized, the agency shall continue to be subject to annual sunset review by the Legislature.

Evaluation Method

Based upon statutory directives and a review of previous sunset reports, Senate staff has developed the following guidelines to be used in a preliminary and subsequent review of the agencies, their programs, and their advisory committees. Guidelines include:

- What is the mission of the agency?
- Why is the agency performing this mission?
- How are the programs of the agency funded?
- What would be the impact to the public health, safety, and welfare should the programs be eliminated or modified?
- What duplication of programs exists within the agency or by other agencies or governments?
- Can these agency programs be provided more efficiently?
- What initiatives has the agency undertaken to increase program efficiency?
- Are there management tools in place to appropriately measure program performance?

Guidelines for Agency Advisory Committees¹³ include:

¹² Senate Committees include: Children, Families and Elder Affairs; Commerce; Community Affairs; Ethics and Elections; Governmental Operations; and Military Affairs and Domestic Security, together with their respective Appropriations Committee.

¹³ Section 11.902(2), F.S., defines "advisory committee" for purposes of the Florida Government Accountability Act as "any examining and licensing board, council, advisory council, committee, task force, coordinating council, commission, or board of trustees as defined in s. 20.03(3), (7), (8), (9), (10), (11), or (12) or any group, by whatever name, created to provide advice or recommendations to one or more agencies, departments, divisions, bureaus, boards, sections, or other units or entities of state government."

- Was the agency advisory committee created to resolve a problem or provide a service? If so, has the problem been solved or the service provided?
- Would there be an adverse effect on the agency if the advisor body were abolished?
- Is the advisory body or committee representative of the public and stakeholders impacted by their actions?

The Senate Committee on Community Affairs' staff presented its report on the Sunset Review of the Department of Community Affairs in 2009 and has updated its report in the 2010 issue brief.¹⁴ These reports address the issues identified in the guidelines and provide an updated overview of the Department of Community Affairs, the Division of Emergency Management, and the Florida Housing Finance Corporation. The reports also provide recommendations for the reenactment of the Department, the division, and the corporation.

Recommendations and Issues

With respect to the Department of Community Affairs, the professional staff of the Senate's Community Affairs Committee recommends the following:

- The Department of Community Affairs should be retained for the following reasons:
 - The Department is the conduit for federal funding through the stimulus packages and 93 percent of the Department's funds come from annual federal appropriations for various federal programs.
 - The Department is designated by law as the state's land planning agency. As such, the Department's Division of Community Planning works with local governments to implement and administer our growth management laws and associated programs and services such as Local Government Comprehensive Planning, Areas of Critical State Concern, Rural Land Stewardship Areas, Developments of Regional Impact, Option Sector Planning, Springs Protection, Military Base Compatibility Planning, and planning support for long-term recovery from disasters. Community planning programs and initiatives strengthen the ability of Florida's 67 counties and more than 400 cities to adopt local comprehensive plans that guide growth and development.
 - In addition, the Florida Legislature has made revisions to the Growth Management Act in each of the last five years. Most recently, the Legislature enacted the "Community Redevelopment Act," which provides significant changes to the Growth Management Act of 1985. The Department has the responsibility and the expertise necessary to implement legislative directives. Any disruption in the Department's review and approval of local government comprehensive plan amendments may lead to uncertainty, costs, and delays for development projects that provide economic stimulus and jobs.
- The committee may want to consider a review of the Waterfronts Florida Partnership Program, the Stan Mayfield Working Waterfronts Program, and the revisions contained in amendment 6 to the State Constitution, relating to classification of Working Waterfront property, which was adopted in November 2008, to delete any duplicative provisions and to ensure compatibility among the programs.

¹⁴ SENATE COMMITTEE ON COMMUNITY AFFAIRS, AGENCY SUNSET REVIEW OF THE DEPARTMENT OF COMMUNITY AFFAIRS, 2010-209 ISSUE BRIEF, *available at* http://www.flsenate.gov/data/Publications/2010/Senate/reports/interim_reports/pdf/2010-309ca.pdf.

- The committee may want to consider granting the Department the authority to impose fees for review of comprehensive plan amendments and proposed revived homeowners' covenants and restrictions.
- The committee may consider deleting references to Front Porch Florida, the Low-Income Emergency Home Repair Program, and the Community Workforce Housing Innovation Pilot Program once all CWHIP contracts are closed.

With respect to the Florida Housing Finance Corporation, the professional staff of the Senate's Community Affairs Committee recommends that the Florida Housing Finance Corporation should be retained.

The professional staff of the Senate's Military Affairs and Domestic Security Committee recommends retention of the Division of Emergency Management, but a number of issues related to the division that bear closer review.¹⁵

The Joint Legislative Sunset Committee recommends the following changes:

- The Small County Technical Assistance Program should be transferred from the Department of Agriculture and Consumer Services to the Department of Community Affairs.
 - The program was created for the purpose of providing technical assistance to small counties to enable them to implement workable solutions to financial and administrative problems.¹⁶
 - The program has not been funded in the last 3 years.
 - The Department of Agriculture and Consumer Services proposed eliminating this program, noting that it was not mission critical.
 - The Department of Community Affairs already provides direct technical assistance to local governments, when funding is available, to meet statutory requirements under Chapter 163.
- Consolidate the Florida Community Trust and the Florida Recreation Development Assistance Program and administer these programs in the Department of Community Affairs.
 - The Department of Community Affairs administers the Florida Community Trust while the Department of Environmental Protection administers the Florida Recreation Development Assistance Program (FRDAP).
 - Both programs involve park development and both have similar application processes and scoring.
 - Combining programs would reduce redundancy and allow for the creation of a single application for the land and recreational improvements.
 - The Department of Community Affairs has the larger of the two programs and its mission is to partner with local governments.
- The manufactured building programs should be consolidated under the Department of Business and Professional Regulation (DBPR).
 - Currently, Florida has three state agencies that are charged with making sure homes are constructed to the proper standards.

¹⁵ See SENATE COMMITTEE ON COMMUNITY AFFAIRS, AGENCY SUNSET REVIEW OF THE DEPARTMENT OF COMMUNITY AFFAIRS, 2010-209 ISSUE BRIEF, *available at* http://www.flsenate.gov/data/Publications/2010/Senate/reports/interim_reports/pdf/2010-309ca.pdf.

¹⁶ Section 163.05, F.S.

- The Department of Community Affairs administers a state program that oversees manufactured or modular buildings, both residential and commercial.
- The Department of Highway Safety and Motor Vehicles operates a federal program for mobile homes.
- The Department of Business and Professional Regulation regulates the construction industry (site built homes) and building code administrators and inspectors.
- These programs are all administered in a different manner.
- Consolidation may streamline and maintain control of the regulation process and utilize private sector contractors.

Senate Committee on Community Affairs staff recommends that the Senate create two bills for consideration in the 2010 session: one to reenact the Department of Community Affairs, the Division of Emergency Management, and the Florida Housing Finance Corporation and one to revise programs and issues addressed above. Retaining the Department of Community Affairs should provide continuity in Florida's growth management scheme at a time when local governments are adjusting to policy changes created in recent legislation. In addition, the Department of Community Affairs serves as an effective conduit for a significant amount of federal funding. Removing unfunded or defunct programs will help to eliminate confusion regarding the responsibilities of the Department.

III. Effect of Proposed Changes:

Section 1 of the PCS reenacts s. 20.18, F.S., thereby reenacting the Department of Community Affairs, including Division of Community Planning, the Division of Housing and Community Development, and the Division of Emergency Management.

Section 2 of the PCS reenacts s. 420.504, F.S., thereby reenacting the Florida Housing Finance Corporation.

Section 3 provides an effective date.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

Retaining the Department of Community Affairs may promote stability and reduce uncertainty in light of recent changes in growth management legislation. Reducing uncertainty would be expected to promote economic development.

C. Government Sector Impact:

The PCS maintains the status quo and avoids transaction costs associated with moving the Department's responsibilities to other agencies. The Department acts as a pass through for a number of federal dollars that will continue to be retained by reenactment of the Department. Finally, the Department generally exceeds its approved performance measures/standards indicating that the Department is using its existing appropriations effectively.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

PCS (690008) by Community Affairs:

Reenacts the Department of Community Affairs, including Division of Community Planning, the Division of Housing and Community Development, and the Division of Emergency Management, and the Florida Housing Finance Corporation.

B. Amendments:

None.